

# **Exhibit 9**

to

**Defendant's Motion to Dismiss**

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UNITED STATES DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

IN THE MATTER OF THE DISPUTE  
BETWEEN THE MESA GRANDE AND SANTA  
YSABEL BANDS OF MISSION INDIANS  
CONCERNING OWNERSHIP OF CERTAIN RES-  
ERVATION LANDS IN CALIFORNIA

--oOo--

Held at

United States Courthouse

325 West F. Street

San Diego, California

October 21, 1974

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COPY

VOLUME I OF ONE VOLUME

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A P P E A R A N C E S:

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Thursday, October 21, 1974

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San Diego, California

Thursday, October 21, 1974

10:50 a. m.

JUDGE HAMMETT: At this time, I am convening the hearing regarding the dispute between the Mesa Grande and Santa Ysabel Bands of Mission Indians concerning ownership of certain reservation land in California, specifically, San Ysabel tracts one and two.

My name is William E. Hammett. I am Administrative Law Judge with the Office of Hearing and Appeals, United States Department of Interior. This hearing is being conducted under the authorization by the Secretary of Interior and the direction of the Office of Hearing and Appeals.

At this time, I would like to call Dr. Lowell Bean as a witness. And, I would like to state at the outset, at the time --

MR. ALBU: Excuse me, Your Honor. I thought, that perhaps if we put Mr. Gianelli from the Bureau of Indian Affairs, he can inform the audience what is precisely involved here.

JUDGE HAMMETT: All right. Thank you, Mr. Albu.

Incidentally, before Mr. Gianelli is placed on the stand for testimony; it is my understanding that the San Ysabel Band is not represented by legal counsel. That does not preclude them from having the right to cross-examine any witness placed on the stand, and who gives testimony here.

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1. However, in order to keep decorum in the hearing room, I think,  
2. that there should be a spokesman nominated to ask any questions  
3. that the band may want to ask.

4. Mr. James Ponchetti, since you are the spokesman for  
5. the band; would you care to represent the band insofar as  
6. asking questions of witnesses?

7. MR. PONCHETTI: Yes.

8. JUDGE HAMMETT: Let the record reflect Mr. Ponchetti  
9. has acknowledged that he would represent the band and cross-  
10. examination of witnesses.

11. All right. Mr. Gianelli would you come forward to make  
12. a statement for the record.

13. WILLIAM H. GIANELLI  
14. having been duly sworn, testified as follows:

15. JUDGE HAMMETT: Would you like to examine the witness,  
16. Mr. Albu?

17. MR. ALBU: Fine, Your Honor.

18. DIRECT EXAMINATION

19. By Mr. Albu:

20. MR. ALBU: Q. Would you please state your full name  
21. and spell your last name for the record, and state your place  
22. of employment?

23. A. Yes. It's William H. Gianelli, G-i-a-n-e-l-l-i. I'm a  
24. Realty Officer, Southern California Agency, Bureau of Indian  
25. Affairs, Riverside, California.

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1 Q. And, how long have you been in the position of Realtor  
2 Officer there, Mr. Gianelli?

3 A. Eight years.

4 Q. What are your responsibilities as a Realtor Officer?

5 A. My conduct is the keeping of the files and protection of  
6 titles of the Indian lands in Southern California.

7 Q. Are you familiar with the legal titles in the tracts of  
8 land in question here?

9 A. Yes, I am.

10 Q. All right. For the benefit of the audience here, would  
11 you briefly explain how maps are labeled as to township and  
12 range? For example, if we refer to a township and range,  
13 so they can understand how you locate it on the map?

14 A. Mostly the area that we are talking about is township 11  
15 and 12 south, and range, I guess, mostly in range 2 and 3 east.  
16 see if I can read this here. -- the townships are running this  
17 way; this is township 11 south running from this line going  
18 across here up. This is 12 south. (indicating).

19 JUDGE HAMMETT: When we say "this" it doesn't help our  
20 reporter very much so, you can identify, when you get through  
21 there.

22 THE WITNESS: I am identifying from the United States  
23 geological quadrangle map, entitled Ranchita Quadrangle,  
24 R-a-n-c-h-i-t-a. This is in four parts, the particular map  
25 is actually six parts.



1 Do you want me to label all these parts?

2 MR. ALBU: I think that will be sufficient. We will  
3 introduce them as Exhibits.

4 JUDGE HAMMETT: Go ahead.

5 MR. ALBU: Q. And, there would be a line dividing range  
6 2 East and range 3, is that correct?

7 A. Yes.

8 Q. Could you show us the approximate location of that line?

9 A. Okay. This is separation (indicating). So, the separation  
10 easier for you, is that tract three is in two south, and one  
11 and two are in three south.

12 Q. That was my next point --

13 A. Excuse me, 2 east, I meant, 2 east. San Ysabel is in  
14 range 3 east. Tract 1 and 2 of San Ysabel are in range 2  
15 east.

16 Q. Okay. The map is curled a little bit, but if you uncurl  
17 it, there is also a small tract off to your left. Going  
18 clockwise starting from San Ysabel number 1, could you identify  
19 the tracts?

20 A. This is tract 1 (indicating), tract 2 (indicating).

21 JUDGE HAMMETT: You're going to introduce this as an  
22 Exhibit?

23 MR. ALBU: Yes, as an Exhibit.

24 JUDGE HAMMETT: Well, when he says "this", of course,  
25 it doesn't mean too much to the reporter.

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1 MR. ALBU: Q. Let's go to Exhibit 1.

2 A. Starting with tract one of Mesa Grande, in township,  
3 actually township 12 south, range 2 east, consisting of 3,120  
4 acres. That's tract one of the San Ysabel Indian Reservation.  
5 Then, clockwise, we hit the 120 acres, identified as the  
6 Mesa Grande Indian Reservation. It is in the same township  
7 and range.

8 Tract 2, of the San Ysabel Indian Reservation, in the  
9 same township and range as tract 1 and the Mesa Grande Res-  
10 ervation. Tract 2 is 3,120 acres. Tract 1, is 2,720 acres.  
11 Mesa Grande is a 120 acres.

12 Then, going clockwise again, we hit tract 3 of the San  
13 Ysabel Reservation; it consists of 9,686 acres.

14 Q. Okay. That should be sufficient.

15 Now, I would like to get into the legal history of how  
16 those came to be Indian Reservations.

17 JUDGE HAMMETT: Do you want to introduce that as an  
18 Exhibit, at this time?

19 MR. ALBU: Yes. We would like to have the map intro-  
20 duced as Exhibit 1 for the Mesa Grande Band.

21 JUDGE HAMMETT: It has previously been sufficiently  
22 identified. So, it will be barred for purposes of ident-  
23 ification and received into the record of the hearing as  
24 Exhibit 1.

25 MR. ALBU: Q. Calling your attention to the Executive

1. Order of 1875, Mr. Gianelli, can you tell us how those three  
2. tracts, referred to on this map, as tracts 1, 2, and 3 were  
3. identified?

4. A. They are identified as the San Ysabel Indian Reservation.

5. Q. And, reading from the Executive Order, what are the next  
6. words after the San Ysabel?

7. A. Could you give me just one moment, please?

8. Q. Sure.

9. JUDGE HAMMETT: You are going to identify the Executive  
10. Order?

11. MR. ALBU: Yes. I can introduce a copy in the record,  
12. or we can do it as we agreed upon, and we can introduce all  
13. the documents at a later time.

14. JUDGE HAMMETT: Well, I think, if he's going to read  
15. from it; we should at least identify the date.

16. MR. ALBU: Right. This would be the 1875 Executive  
17. Order of President U.S. Grant.

18. THE WITNESS: Forgive me I did bring the patent rather  
19. than the --

20. MR. ALBU: Q. Okay. You can use my copy.

21. A. Yes. This is, in fact, a copy of the Executive Order,  
22. and it does read San Ysabel, including Mesa Grande.

23. Q. All right. So, there is some evidence that in 1875, it  
24. was intended that there would be two bands of Indians living  
25. on those three tracts of land; is that correct?

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1 A. I'm afraid, I don't know how to interpret this.

2 Q. Okay. Do you know if the 120 acre reservation, the  
3 description, is anywhere mentioned in this Executive Order?

4 A. Unless I'm reading it too fast, I don't seem to catch it  
5 here.

6 Q. Okay. Thank you. Next, Mr. Gianelli, I would like to  
7 call your attention to the 1883 Executive Order of President  
8 Chester-A. Arthur. Does the legal description in that  
9 Executive Order describe the 120 acres?

10 A. Yes, it does appear. Yes.

11 Q. Okay. So, then, what is now the Mesa Grande Indian Res-  
12 ervation was first set aside in Executive Order in 1883; is  
13 that correct?

14 A. It would appear so, yes.

15 Q. Okay. Again, Congress had reason to act regarding the  
16 Santa Ysabel Reservation Number 3 Reservation in 1920, in  
17 which some land was purchased for the San Ysabel Number 3.  
18 Are you familiar with that act of Congress?

19 A. Yes, the 510 acres you are speaking of.

20 Q. Do you have the precise language of Legislature which  
21 authorized that purchase?

22 A. 510 acres; I do have the wording.

23 Q. We are talking about 510 acres?

24 A. Yes, we are. -- no, I'm sorry, we're talking about a  
25 cemetery. Yes, that's 10 acres.

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1 Q. Let me give you my copy. Would you, please, read for  
2 the record the contents of that act?

3 A. Yes. "For purchase of a certain 10 acre tract of land  
4 in San Diego, California, on which is situated an old Indian  
5 cemetery used by the Indians on Volcan Indian Reservation,  
6 and needed for the present and future use, \$600."

7 Q. And, what would you consider to be the Volcan Indian  
8 Reservation?

9 A. I'm afraid that is more historical than title. I'm afraid  
10 that I couldn't give you an adequate answer on this.

11 Q. So, then, from this Legislation, you don't know where  
12 Congress intended that title, the title for that land to go;  
13 is that correct?

14 A. I suppose on the basis of reading just these they were --

15 Q. Do you know, in fact, what band of Indians received title  
16 to that 10 acres?

17 A. It was conveyed to the United States of America.

18 Q. In trust?

19 A. Yes. It would be of that case.

20 Q. In trust for what band of Indians?

21 A. There is no band of Indians named on the document.

22 Q. Does the United States hold that land in trust or in fee,  
23 Mr. Gianelli?

24 A. They hold it in trust tax -- they hold it in tax exempt  
25 tax.

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1 Q. Who do they hold that for?

2 A. We consider it on our record as part of the Santa Ysabel  
3 Indian Reservation.

4 Q. What bands do you consider to be the legal owners or  
5 equitable owners of that land?

6 A. The Santa Ysabel band of Mission Indians.

7 Q. The Santa Ysabel band. Okay. Thank you. In 1925, by  
8 Executive Order, 80 acres was set aside as an addition to  
9 tract number 1. Let me give you a copy of that Executive  
10 Order. From that Executive Order can you indicate what band  
11 of Indians was intended to receive that 80 acre tract of land?

12 A. "It is hereby ordered that the following described land  
13 be withdrawn for the use and benefit of the Indians of the  
14 Mesa Grande Indian Reservation under jurisdiction of the  
15 Mission Indian Agency in California."

16 Q. Okay. Can you point on the map where that 80 acres is  
17 located?

18 A. (Indicating)

19 Q. Let the record show that Mr. Gianelli is pointing to  
20 an addition to tract 1 of the Santa Ysabel Indian Reserva-  
21 tion. Thank you, Mr. Gianelli.

22 Pursuant to that Executive Order, Congress passed some  
23 Legislation which, in fact, made the 80 acre tract a legal  
24 part of the Reservation. Could I also have you read from  
25 that document?

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1 JUDGE HAMMETT: Your referring now to the 1925 Executive  
2 Order?

3 MR. ALBU: I am referring to the legislation in 1926.

4 JUDGE HAMMETT: Is it from the results of the 1925  
5 Executive Order you made reference to?

6 MR. ALBU: Well, let me explain for the record, that the  
7 process here is that the President withdraws land from entry;  
8 it keeps non-Indians out of the land by Executive Order,  
9 but Congress must pass legislation which authorizes that land  
10 to be held in the name of the United States for the Indians.  
11 The legislation that I am referring to, would be the act of  
12 May 10, 1926.

13 MR. ALBU: Q. Would you indicate when Congress authorized  
14 this addition to tract 1, the language in which it was added  
15 to a reservation, which Indians were to receive this land?

16 A. "The chose (phonetic) use for reference to title, for  
17 the use of the Indians of the Mesa Grande Reservation, known  
18 also as Santa Ysabel Reservation Number 1."

19 Q. So, in this case, we have the Congress saying that Santa  
20 Ysabel Number 1 is the Mesa Grande Indian Reservation. Is  
21 that what that appears to say?

22 A. Yes, and visa versa.

23 Q. Okay. Thank you. Now, in 1926, land was also added  
24 to the tract number 3 of the Santa Ysabel Indian Reservation,  
25 also known as the Volcan Reservation; that's the 510 acre

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